



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

**Notice of Repeal and Replacement of
National Instrument 45-106 *Prospectus And Registration Exemptions*
and Related Forms and Companion Policy**

and

**Notice of Amendments to
National Instrument 45-102 *Resale of Securities*
and Related Form and Companion Policy**

Introduction

The Canadian Securities Administrators (the CSA or we) have approved the following (together, the New Materials):

- amended and restated National Instrument 45-106 *Prospectus and Registration Exemptions*, Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgement* and Form 45-106F5 *Risk Acknowledgement – Saskatchewan Close Personal Friends and Close Business Associates* (together, the 45-106 Instrument), which replace the versions currently in force,
- amended and restated Companion Policy 45-106CP *Prospectus and Registration Exemptions* (45-106CP), which replaces the version currently in force,
- amendments to National Instrument 45-102 *Resale of Securities* and Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* (together, the 45-102 Instrument), and
- amended and restated Companion Policy 45-102CP *Resale of Securities* (45-102CP).

Subject to Ministerial approval requirements, the 45-106 Instrument and the amendments to the 45-102 Instrument will come into force on September 28, 2009 in all CSA jurisdictions other than Ontario. In Ontario, subject to Ministerial approval requirements, the 45-106 Instrument and the amendments to the 45-102 Instrument will come into force on the later of: (a) September 28, 2009, and (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.

The 45-106CP and the 45-102CP will come into force on the same date as the 45-106 Instrument and the amendments to the 45-102 Instrument.

Contents of this Notice

This Notice consists of the following:

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This Notice also contains the following appendices:

- Appendix A *List of Commenters on the 2008 Proposal*
- Appendix B *Summary of Written Comments on the 2008 Proposal*
- Appendix C *45-106 Instrument and 45-106CP*
- Appendix D *45-106 Instrument and 45-106CP, blacklined to show changes to the 2008 Proposal*
- Appendix E *45-102 Instrument and 45-102CP*
- Appendix F *45-102 Instrument and 45-102CP, blacklined to show changes to the 2008 Proposal*
- Appendix G *Amendment instruments amending the 45-102 Instrument*
- Appendix H *Consequential amendments to national instruments*
- Appendix I *Local notice* (where applicable)

1. Substance and purpose of the New Materials

45-106 Instrument and 45-106CP

The New Materials reflect substantive changes which are designed to improve the effectiveness of the 45-106 Instrument and 45-106CP. These changes:

- clarify certain provisions of the 45-106 Instrument and 45-106CP,
- reflect policy decisions that we have made in the course of granting exemptive relief,
- provide additional guidance to market participants on the applicability of the exemptions contained in the 45-106 Instrument, and
- harmonize exemptions previously found in local instruments.

In addition, the New Materials support the implementation of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103). The 45-106 Instrument has been restructured so that the prospectus exemptions are in Part 2 and the registration exemptions are in Part 3. The registration exemptions in Part 3 will no longer be available six months after the coming into force of NI 31-103. A subset of these registration exemptions is included in NI 31-103.

45-102 Instrument and 45-102CP

The amendments to the 45-102 Instrument and 45-102CP are designed to:

- clarify certain provisions of the 45-102 Instrument and the 45-102CP, and
- update the legending requirements where an electronic book-entry system is used or where the purchasers of securities do not receive a paper certificate from the issuer.

2. Summary of feedback received

2008 Proposal

On February 29, 2008, we published the New Materials for a 90-day comment period (the 2008 Proposal). The comment period ended on May 29, 2008. During the comment period, we received 12 written submissions on the 2008 Proposal.

We thank everyone who provided comments. Copies of the comment letters are posted on the OSC website at www.osc.gov.on.ca. Copies are also available from any CSA member. You can find a list of the names of the commenters and a summary of the comments we received on the 2008 Proposal, together with our responses, in Appendices A and B of this Notice.

We considered all comments received and have made changes to the New Materials in response to the comments. However, as these changes are not material, we are not republishing the New Materials for a further comment period. You can find a description of the key changes we have made to the 2008 Proposal in section 3 of this Notice.

Ontario 2009 Proposal

On May 22, 2009, the Ontario Securities Commission (OSC) published amendments to the New Materials for a further 30-day comment period (the Ontario 2009 Proposal). The comment period ended on June 22, 2009. No written submissions were received during the comment period. For more information on the Ontario 2009 Proposal, see the OSC notice dated July 17, 2009 in Appendix I of this Notice (as published in Ontario).

3. Summary of changes to the 2008 Proposal

Detailed blacklines showing changes made to the New Materials from the 2008 Proposal are in Appendices D and F of this Notice.

Registration exemptions

As noted above, we restructured the 45-106 Instrument so that the prospectus exemptions and registration exemptions are independent from one another. The prospectus exemptions are in Part 2 and the registration exemptions are in Part 3.

When we published the 45-106 Instrument for comment, it was anticipated that the registration exemptions in Part 3 would not be available six months after the coming into force of NI 31-103 in most CSA jurisdictions. Following that transition period, the registration exemptions in Part 3 would only be available where the person effecting the trade was located in British Columbia or Manitoba and not registered in any CSA jurisdiction.

After further review and consideration of the comments received, we decided to remove the availability of all registration exemptions in the 45-106 Instrument following the six-month transition period.

The British Columbia Securities Commission, the Alberta Securities Commission, the Manitoba Securities Commission, Government of the Northwest Territories - Office of the Superintendent of Securities, Government of Nunavut - Department of Justice, and Government of the Yukon Territory - Community Services have decided to provide the following dealer registration exemptions after the end of the transition period:

- accredited investor exemption,
- family, friends, and business associates exemption,
- minimum amount investment exemption, and
- offering memorandum exemption.

These dealer registration exemptions will be subject to new conditions setting out the circumstances under which they can be used. These exemptions will be set out in blanket orders to be issued by the applicable CSA member.

Saskatchewan is considering whether it will adopt this approach and will release a separate notice when it has made its decision.

As a result, after the transition period, the registration exemptions in the 45-106 Instrument will be no longer be available and all applicable registration exemptions will be located in NI 31-103, local instruments or local blanket orders.

See the CSA notice dated July 17, 2009 accompanying NI 31-103 for a further discussion regarding the registration exemptions that will be available following the implementation of NI 31-103.

Legending requirements

We sought specific comment on the proposed amendments to the legending requirements set out in section 2.5 of the 45-102 Instrument. We received comments on the proposed legending requirements where an electronic book-entry system is used or where the purchasers of securities do not receive a paper certificate from the issuer.

After further review and consideration of these comments, we have clarified section 2.5 of the 45-102 Instrument. In order to be able to resell securities under that provision, the “purchaser” of a security (rather than, specifically, the “beneficial security holder”) must have received written notice of the legending restrictions. We have clarified in the 45-102CP that the reference to a “purchaser” of a security means the person who makes the investment decision about the acquisition of the security. In most cases, we think that the person making the investment decision will be the beneficial owner of the security. We think that the amendments to the legending requirements in the 45-102 Instrument will improve the efficiency of prospectus-exempt market transactions while still maintaining investor protection.

4. Consequential amendments

In conjunction with the New Materials, we are making consequential amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 33-105 *Underwriting Conflicts* (NI 33-105). In particular, we have updated various section references in Appendix A of NI 33-

105 and a section reference to the 45-106 Instrument contained in NI 51-102. The consequential amendments are set out in Appendix H of this Notice.

CSA members in some jurisdictions are also publishing a separate local notice regarding consequential amendments to certain local rules. See the local notices in Appendix I of this Notice for a discussion of these amendments.

5. Staff notices

We intend to withdraw the following staff notices when the New Materials come into force:

- CSA Staff Notice 45-302 *Frequently Asked Questions Regarding the Resale Rules*, and
- CSA Staff Notice 45-305 *Frequently Asked Questions Regarding National Instrument 45-106 Prospectus and Registration Exemptions*.

The relevant interpretive guidance in those notices has been incorporated into 45-106CP and 45-102CP.

We also intend to update CSA Staff Notice 45-304 *Notice of Local Exemptions Related to NI 45-106 Prospectus and Registration Exemptions*.

6. Amendments to local rules

CSA members of some jurisdictions are publishing a separate local notice regarding amendments to certain local rules. These amendments include changes to local exemptions or the repeal of local exemptions that are no longer considered necessary or appropriate. See the local notices in Appendix I of this Notice for a discussion of these amendments.

7. Background

Anticipated costs and benefits

The CSA believe that the New Materials will, when implemented, yield benefits and reduce costs to market participants for the reasons discussed below.

(i) *Harmonized exemptions*

The 45-106 Instrument and NI 31-103 harmonize many of the prospectus and registration exemptions currently available across Canada. The New Materials codify exemptive relief previously granted by the CSA. They also harmonize in a national rule certain exemptions which were previously local in application. Market participants wishing to effect an exempt distribution will continue to look primarily to the 45-106 Instrument for prospectus and, until the implementation of NI 31-103, registration exemptions, which may simplify compliance with the applicable exemptions.

(ii) *No increase in filing and disclosure requirements*

The New Materials do not introduce any significant new filing or disclosure requirements.

(iii) *Support implementation of NI 31-103*

The New Materials will facilitate the implementation of NI 31-103. NI 31-103 contemplates harmonized registration requirements across all CSA jurisdictions. See the CSA notice dated February 29, 2008 requesting comment on NI 31-103 for a discussion of the anticipated costs and benefits of NI 31-103.

Alternatives considered

No alternatives to the New Materials were considered.

Reliance on unpublished studies, etc.

In developing the New Materials, we did not rely upon any significant unpublished study, report or other written materials.

8. Where to find more information

The New Materials and related consequential amendments are available on websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

Questions

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